IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 133 OF 2006

With

CIVIL APPLICATION NO. 11332 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MAHESH CHANABHAI GOHEL & ANR. - Appellant(s)
Versus
SHANTILAL THAKORDAS - Respondent(s)

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Appearance :

SHRI SANDEEP N. BHATT for Appellant(s) : 1 - 2.
SHRI PRAVIN GONDALIYA for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 08/11/2006

COMMON ORAL JUDGMENT

Heard the learned Counsel for the parties on the question of admission.

2. The appeal is admitted for hearing on the following substantial question of law:

> *“Whether the findings recorded by the learned first Appellate Court are based on misreading and misappreciating the evidence, especially, misreading the statement made by the respondent-plaintiff that `she was not issuing any rent receipts to anybody' by reading that she denied the fact that she was not issuing any rent receipts?”*

With the consent of the parties, the matter is finally heard.

3. The respondent had filed a suit for eviction of the present appellants on the ground that the present appellants, successors of Chanabhai Gohel, were residing in the suit premises as licensee and as the license had been revoked, they are liable to be evicted.

3.1 The defendants appeared in the Court and submitted that in fact, they were the tenants, they were paying the rent regularly, but, the landlord was not issuing any rent receipts to anybody, especially, to the present appellants.

3.2 After recording the evidence and hearing the parties, the learned trial Court decreed the suit and as the appeal proved futile, the appellants are before this Court.

4. Shri Bhatt, learned Counsel for the appellants-tenants, after referring to the statement made by the respondent, submitted that the categorical admission made by Labhuben Thakordas was that she was not issuing any rent receipts to anybody, his further submission is that the Appellate Court misread this admission as, ”she had denied that she was not issuing any rent receipts to anybody”. He submits that in a case where the dispute relates to status of the person occupying the property, the question of issuance of rent receipt would assume material importance. His further submission is that true effect of the admission made by Labhuben is if taken into consideration, tables might have tilted in favour of the appellants.

5. Shri Pravin Gondaliya, learned Counsel for the respondent, on the other side, submits that the statement of the plaintiff is to be read as a whole and stray sentences cannot be picked out to interpret the whole

statement. He also submits that in the first part of the statements, Labhuben had denied the relationship and has also stated that her husband was not receiving any rent, therefore, was not issuing any rent receipts. According to him, a wrong statement cannot provide a foundation in favour of the appellants-defendants.

6. After going through the statements of Labhuben Thakordas, I must observe that the learned first Appellate Court did not read the evidence properly, nor it had taken into consideration the impact and effect of the admission made by the respondent-plaintiff. It would have been altogether a different thing that the learned Appellate Court, after correctly reading the statement of Labhuben, had interpreted the same to mean something, but, it would be absolutely inappropriate on the part of the Appellate Court to misread the evidence and record a finding thereafter.

7. Taking into consideration the totality of the circumstances and that a very material piece of evidence, which could tilt the table in favour of the defendants, has been misread and ignored by the learned first Appellate Court, I refuse to approve the findings recorded by the learned first Appellate Court. The

judgement and decree passed by the learned first Appellate Court are hereby set aside. The matter is hereby remanded to the learned first Appellate Court for giving due opportunity of hearing to the parties and to decide the matter afresh in accordance with law and in view of the observations relating to reading of correct facts, preferably within a period of six months from the date of appearance of the parties.

8. The parties present in the Court shall appear before the learned first Appellate Court on 4th December, 2006. The Registry is hereby directed to send a copy of this judgement to the learned first Appellate Court, enabling the said Court to know as to what it has to do. No costs. The decree be framed accordingly.

9. Civil Application No.11332 of 200, in view of the final disposal of the appeal, stands disposed of. Notice is discharged. Interim relief, if any, granted earlier shall stand vacated. No costs.

[R.S.Garg, J.]

*kamlesh**